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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

GLORIA DELGADO,

Defendant and Appellant.

2d Crim. No. B238081
(Super. Ct. No. 2008001932)
(Ventura County)

Gloria Delgado appeals a post-sentence order denying her motion for increased conduct credit pursuant to the 2011 amendment to Penal Code section 4019.¹ We affirm. (*People v. Lara* (2012) 54 Cal.4th 896, 906, fn. 9; *People v. Brown* (2012) 54 Cal.4th 314, 328-329.)

FACTS AND PROCEDURAL HISTORY

On February 14, 2009, a jury convicted Delgado of making a criminal threat, attempting to make a criminal threat, dependent adult abuse, and two counts of misdemeanor business obstruction. (§§ 422, 664, 368, subd. (b)(1), 602.1, subd. (a).) The crimes occurred on January 10, 2008, when Delgado disrupted hospital medical personnel as they cared for her son.

On April 3, 2009, the trial court sentenced Delgado to three years eight months imprisonment, imposed various fines and fees, and ordered payment of victim

¹ All further statutory references are to the Penal Code.

restitution. The court ultimately awarded her 292 days of presentence custody credit (198 actual days plus 94 conduct credit days). Delgado appealed and on June 22, 2010, we affirmed the judgment of conviction. (*People v. Delgado* (June 22, 2010, B213271) [nonpub. opn.].)

On November 2, 2011, Delgado, in propria persona, filed a motion seeking "half-time" reduction in her sentence pursuant to amended section 4019, operative October 1, 2011. The trial court determined that the motion had "no merit" and denied her request for additional credit.

Delgado appeals and asserts that she is entitled to an additional 104 days of conduct credit. Specifically, she argues that denial of increased credit violates the constitutional command of equal protection of the law pursuant to the federal and California Constitutions. (U.S. Const., 14th Amend.; Cal. Const., art. 1, § 7, subd. (a).)

DISCUSSION

The Legislature has amended section 4019 several times, increasing or decreasing the rate at which prisoners can earn conduct credits. At the time Delgado committed her crimes (January 10, 2008), section 4019 permitted an award of six days deemed served for every four days in actual custody for those prisoners who followed the rules and regulations of confinement. Operative October 1, 2011, the Legislature amended section 4019 to increase the conduct rate to award four days for every four days in actual custody. (Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 12, § 35, pp. 3945-3946, eff. Sept. 21, 2011, operative Oct. 1, 2011.) The Legislature also added subdivision (h) to section 4019, providing: "The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined . . . for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law."

People v. Brown, *supra*, 54 Cal.4th 314, recently decided that prospective application of a former version of section 4019 allowing increased credits does not violate the equal protection clauses of the federal and California Constitutions. "[T]he important correctional purposes of a statute authorizing incentives for good behavior

[citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response. That prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows." (*Brown*, at pp. 328-329.)

Here Delgado committed her crimes nearly four years before the October 1, 2011, operative date of amended section 4019. Constitutional principles of equal protection of the law do not require retroactive application of the amendment to her. (*People v. Lara, supra*, 54 Cal.4th 896, 906, fn. 9 [declining to find equal protection violation with prospective application of Oct. 1, 2011 amendment]; *People v. Johnson* (2012) 53 Cal.4th 519, 528 ["The trial court and Court of Appeal are, indeed, bound by decisions of [the California Supreme] court"].)

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Bruce A. Young, Judge
Superior Court County of Ventura

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

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